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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-581

R. H. MACY & CO., INC. and BAMBERGER'S,
a division of R. H. MACY & CO., INC.,

Petitioner,

v.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN and MICROELECTRONIC SYSTEMS CORPORATION OF AMERICA, as Real Party in Interest,

Respondents.

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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Dated: New York, New York
December 30, 1977

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Although respondent itself quotes the District Court's finding that "Macy's only contact with Michigan was through the ordering of goods by mail from a corporation in Michigan" (Brief in Opposition, p. 8), it devotes its brief largely to attempting to show that, in fact, there were

other contacts with the State of Michigan.* For the first time, also, it argues that this case involves "harsh disagreement regarding the proper exercise of the District Court's discretionary powers" (Brief in Opposition, p. 5).

1.

There is no factual dispute in these cases other than the District Court's clearly erroneous finding that Macy's had contact with Michigan "through the ordering of goods by mail" (see Petition, p. 6), if indeed that finding means that *Macy's* ordered by mail, despite the Court's simultaneous finding that the orders were "forwarded to Micro" by Micro's independent manufacturer's representative who personally received the orders in New York and New Jersey. (Petition, Appendix A, pp. 4a, 3a).

2.

Moreover, respondent simply cannot mean that these cases involve a question about the District Court's discretionary powers. Clearly, the District Court has no discretion insofar as its constitutional jurisdiction is concerned. If respondent be taken to mean that there is disagreement about whether the District Court properly exercised its decisional powers, then we are back to a record of undisputed facts establishing that petitioner had no contact with the State of Michigan and not to a record, which respondent erroneously postulates, of disputed evidence of contacts.

* Since the District Court found that apart from the putative mail order there was *no* contact with Michigan, all respondent's suggestions which pervade its brief that there were "other relevant events" (Brief in Opposition, p. 2) are mere argumentation. Respondent made the same contentions in the District Court about the consequences of delivery F.O.B. to a preferred carrier as it seeks to make here, and similarly ignored the express terms of the purchase orders under which title and risk of loss did not pass in Michigan (see Petition, p. 6); the District Court nevertheless did not find contacts with Michigan on the basis of such contentions.

3.

Just as respondent attempts to establish factual disputes which do not exist, it asserts also non-existent differences in the relevant long-arm statutes. Petitioner relies upon the decisions of two United States Courts of Appeals, nine United States District Courts, and fifteen State Courts in long-arm jurisdiction cases (Petition, pp. 9-11), to support its demonstration that the District Court in this case so clearly departed from accepted legal standards that review by this Court is necessary. Respondent says that "[t]he decisions which Petitioner cites, in which jurisdiction was denied over a buyer in the circumstances of Petitioners, were based upon statutes, most of which differ from the Michigan statute from which this case evolves. Many of the purisdictional statutes from other states are construed in a more limited manner than that of Michigan." (Brief in Opposition, p. 9).

Petitioner and respondent agree that Michigan has construed "its long-arm statute as being the broadest grant of jurisdiction consistent with the Constitutional requirements of due process." (Petition, p. 7; Brief in Opposition, p. 7, n. 2). Contrary to respondent's assertion, however, of the cases cited by petitioner, ten of the eleven decisions by federal courts and ten of the fifteen decisions by State courts explicitly rely on the due process standard set forth in *International Shoe Co.* v. *Washington,* 326 U.S. 310 (1945), in construing the statutes there involved to determine their reach, and nevertheless hold that a buyer in the circumstances of petitioner is not subject to a long-arm statute, so construed as exercising the broadest limits of State power.

Conclusion

On the undisputed facts, the District Court departed from the accepted standards for the constitutional exercise of jurisdiction, and the Court of Appeals failed to correct that serious lapse by mandamus. Ultimate appeal from an adverse final decision of the District Court after a full trial is not a "readily available alternative remedy" (Brief in Opposition, p. 2).* The petition for a writ of certiorari, therefore, should be granted so that this Court may affirm that the writ of mandamus should be used to confine the inferior Courts to their constitutional jurisdiction.

Respectfully submitted,

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* Respondent itself cites *Grace Lines, Inc.* v. *Motley*, 439 F.2d 1028 (2nd Cir. 1971), to the effect that "the purpose of the All Writs Act (28 U.S.C.A. §1651), is to enable federal appellate courts to review by mandamus, non-appealable interlocutory orders which would be the subject of review on appeal from a final judgment" (Brief in Opposition, p. 4).